REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claim 57 is currently being amended.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 21-34, 36-53 and 55-59 are now pending in this application.

First, Applicant wishes to thank the Examiner for the indication of allowability of claims 23, 33-34, 36-37, 43, 52-53 and 55-56 over the prior of record.

In the most recent office action, the Examiner rejected claims 21-22, 25, 27-28, 32, 38-42, 45, 47, 51 and 57-59 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 7,142,895 (Heatley) in view of U.S. Patent No. 6,882,860 (Kim). In making these rejections, the Examiner asserted that Heatley taught all of the features of these claims with the exception of having an indication of a service delivery mode within a request. However, the Examiner argued that this feature was present in Kim, and that it would have been obvious to incorporate this feature into Heatley.

In response to the Examiner's rejection of claims 57-59 and in order to advance the prosecution of the present application, Applicant has amended independent claim 57 to describe how the service delivery mode associated with the data service and contained within the indication is one of a background service delivery mode, a maintenance service delivery mode, a diagnostic service delivery mode, and a foreground service delivery mode. This new limitation is similar to the limitation found in several of the other pending claims, each of which the Examiner has indicated as being allowable over the prior art of record. Applicant

submits that amended claim 57, as well as dependent claims 58 and 59, are allowable for at least the same reasons that these other claims are allowable over the prior art of record.

With regard to the Examiner's rejection of claims 21-22, 25, 27-28, 32, 38-42, 45, 47 and 51, Applicant respectfully traverses the Examiner's rejection of these claims.

In rejecting the above-referenced claims based upon Heatley, and Kim, the Examiner stated:

> Kim teaches using an indication of service delivery in a call request so the receiving party can distinguish between different types of incoming data service calls…either by ear or sight…Kim discloses incoming data service call alerts and displays can be set by either the manufacture (sic) or user…

Based upon this reasoning, the Examiner asserted that it would have been obvious to incorporate the teachings of Kim into Heatley "in order to allow users to distinguish between incoming call service types." For the following reasons, Applicant disagrees with this position.

Kim is directed to a system and method by which a receiving cellular terminal such as a multi-use telephone or personal digital assistant can provide a user with different "alerts," informing the user that a particular incoming signal comprises a voice call, a circuit call, a facsimile call, etc. However, a notation of whether a particular call is a voice call, a circuit call, etc. is not the same as identifying <u>service delivery modes</u>. As is readily understood by one skilled in the art, a "service delivery mode" refers to the manner in which a particular service is to be delivered to a terminating endpoint. For example, and as noted in the present specification, a background delivery mode refers to the fact that the delivery of the data service at issue is effectuable regardless of the availability of a receiving party to accept delivery of the data service. On the other hand, a foreground delivery service mode refers to the fact that the particular data call at issue maybe more user-specific, thereby raising the possibility that the call will need to be routed differently if the user is not currently available. In other words, a service delivery mode is a type of descriptor of how a particular data service is to be delivered to the receiving station.

In contrast to the above, Kim possesses no teachings whatsoever of service delivery modes. Instead, Kim does nothing more than identify the actual service that is being provided. In other words, Kim is missing the type of descriptor that is used in the claims at issue for enabling the proper routing of data services.

In order to better understand the difference between the service delivery mode of the pending claims and the simple identification of service types discussed in Kim, it is helpful to consider paragraphs [0038]-[0039] of the present application (as published). In these paragraphs, it is discussed what happens when a new data call or message is initiated at an originating device. As is discussed in these paragraphs, if the data request includes an indication of a "background delivery service mode," for example, then the new data call message will be delivered to the desired receiving terminal without regard to whether the user of the receiving terminal is available. If, on the other hand, the data call includes an indication of a foreground service delivery mode, then the data call may be ultimately routed in an entirely different manner, potentially using one of various call forwarding options. As a result, it does not matter whether the intended data call is a short message in service (SMS) call, a facsimile call, etc.; what matters is the indication of *how* the data call at issue is to be delivered or routed.

In contrast to the above, Kim makes no distinction among routing or delivery options, instead only classifying data calls by their physical structure. There is simply no discussion of having individual data calls delivered to a terminating end point in different manners based upon an indication contained within the data call itself. In other words, although Kim may teach providing an indication of which data services are being used, the individual data calls do not contain any indication as to *how* particular calls are to be delivered, i.e., service delivery modes.

Because Kim fails to teach or suggest any indication of a service delivery mode (as opposed to an indication of the actual service) within a request for a data service or data call, Applicant submits that Kim cannot cure the deficiencies of Heatley. As such, Applicant respectfully submits that each of claims 21-22, 25, 27-28, 32, 38-42, 45, 47 and 51 cannot be

rendered obvious by the combination of Heatley and Kim. Therefore, Applicant submits that each of these claims are allowable over Heatley and Kim for the reasons discussed above.

Lastly, the Examiner rejected claims 24, 26, 29-31, 44, 46 and 48-50 based upon Heatley and Kim and in further view of either U.S. Patent No. 6,044,278 (Goto) or U.S. Patent No. 6,687,356 (Glitho). However, each of these claims is directly or indirectly dependent upon one of independent claims 21 and 41, which Applicant submits are allowable over Heatley and Kim. Because Goto or Glitho do not cure the deficiencies discussed previously, Applicant therefore submits that these dependent claims are allowable for at least the reasons discussed above.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under

37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date: <u>November 11, 2008</u>   By   <u>/G. Peter Albert, Jr./</u>

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